

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 97-6359

DEVON CLARKE, a/k/a Little Wayne,
a/k/a John Brown,
Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of Virginia, at Norfolk.
Robert G. Doumar, Senior District Judge.
(CR-88-126-N, CA-96-1020-2)

Submitted: August 13, 1998

Decided: September 2, 1998

Before WIDENER and WILKINS, Circuit Judges, and
HALL, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam opinion.

COUNSEL

Devon Clarke, Appellant Pro Se. Vincent L. Gambale, OFFICE OF
THE UNITED STATES ATTORNEY, Alexandria, Virginia, for
Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Appellant seeks to appeal the district court's order denying relief on his motion filed under 28 U.S.C.A. § 2255 (West 1994 & Supp. 1998). Appellant's conviction became final in 1990. On October 21, 1996, Appellant filed a § 2255 motion. The district court denied relief on the grounds that Appellant filed his motion outside the one-year limitation period imposed by § 2255. Pursuant to our recent decision in Brown v. Angelone, ___ F.3d #6D6D 6D#, Nos. 96-7173, 96-7208, 1998 WL 389030 (4th Cir. July 14, 1998), however, Appellant had until April 23, 1997, in which to file a timely motion. Accordingly, because Appellant filed his § 2255 motion by April 23, 1997, we grant a certificate of appealability, vacate the district court's order, and remand this case for consideration on the merits. We deny Appellant's motion for judicial notice and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

VACATED AND REMANDED